THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.Nos: 9462, 9476, 9477 & 10126 of 2006

% 20-07-2007

Between:

K.Krishna Mohan Rao & others

…Petitioners

and

The Govt. of A.P., rep.by its
Ex-Officio Secretary to Govt.
General Administration (I&PR.III) Department,
Secretariat, Hyderabad & others

…Respondents

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! Counsel for the Petitioners : Sri B.Adinarayana Rao,
Sri P.Venu Gopal,
Sri M.Rajamalla Reddy and
Sri S.Chakrapani

^ Counsel for Respondents : The G.P. for GAD and
Sri K.Ramakrishna Reddy.

<Gist :

>Head Note :

? Citations:

1. (1863)14 CB (NS) 180
2. (1964) AC 40
3. AIR 1986 SC 180
4. AIR 1997 SC 1368
5. AIR 1988 SC 2149

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COMMON ORDER:

In this batch of writ petitions, G.O.Ms.Nos.191 and 192, General Administration (I&PR-II) Department, dated 22.4.2006, are challenged. The facts that gave rise to the filing of these writ petitions, are as under:

For the sake of convenience, the respondents are referred to, as arrayed in W.P.No.9462 of 2006.

Telugu Film Industry took its birth in the city of Madras, and was functioning from that place, for several decades. The Government of Andhra Pradesh in its GAD Department, initiated several steps, for shifting of the Industry to Hyderabad. Several incentives were provided. A Steering Committee was constituted by the Government, through its order in G.O.Ms.No.247, General Administration (I&PR) Department, dated 16.4.1984, to examine the applications for allotment of land and for providing other facilities, in the matter of setting up of

the infrastructural units of the Film Industry in the State. The Committee was headed by a Minister.

An extent of Acs.2-00 of land was allotted to the Department of Information and Cultural Affairs, the 2nd respondent, through orders in G.O.Ms.No.754, Revenue(Q) Department, dated 5.5.1984, for the purpose of film development. After examining the applications, the government allotted half acre of land each, in favour of Sri K.Raghavendra Rao, petitioner in W.P.No.9476 of 2006, Sri K.S.Chakravarthy, petitioner in W.P.No.10126 of 2006, and Sri K.Krishna Mohan Rao, petitioner in W.P.No.9462 of 2006, through orders in G.O.Ms.No.247, dated 16.4.1984. Similarly, one Sri K.S.Prakash, father of the petitioners in W.P.No.9477 of 2006 was allotted half acre of land, through G.O.Ms.No.427, General Administration (I&PR) Department, dated 21.7.1984. While the allotment in favour of Raghavendra Rao and Chakravarthi was for the construction of Recording and Rerecording Theatres, the allotment in favour of other two persons is for establishing Editing and Outdoor Units. The allotment was subject to payment of Rs.8,500/- per acre towards consideration and payment of betterment charges to the Municipal Corporation of Hyderabad, the 5th respondent. Another condition was that the land shall be put to the purpose, for which it was allotted, within one year, and that allotment shall stand cancelled, in the event of
non-compliance with the condition. In pursuance of the allotments, the petitioners were put into possession of the plots.

It is stated that soon after the petitioners are inducted into possession of the respective plots, one Smt. Fathima Bee filed O.S.No.1203 of 1984, in the Court of I Additional Judge, City Civil

Court, Hyderabad, against the petitioners, the 1st respondent and the District Collector, Hyderabad, the 3rd respondent, for the relief of perpetual injunction. An order of temporary injunction was also granted. The suit was ultimately dismissed on 21.3.1994. Smt. Fathima Bee filed A.S.No.92 of 1994 in the Court of III Additional Chief Judge, City Civil Court, Hyderabad, only against the petitioner in W.P.No.10126 of 2006. The appeal was dismissed on 18.2.2006.

After dismissal of the suit, certain developments have taken place in the form of change of land use, execution of sale deeds in favour of respective allottees, and grant of permissions by the 5th respondent. It is stated that in view of the phenomenal changes in the technology, the petitioners had to approach the government, seeking permission to alter the purpose for which the land was allotted, and that such permission has been accorded. The net result is that the three writ petitioners have been accorded permission by the respondents 1, 2 and 5, for construction of Mini Theatres, Film Training Institute, Convention Hall, etc.

Through the impugned G.Os., the 1st respondent took the view that on account of the failure of the petitioners to put the land to the use for which it was allotted, within one year, the allotment stood cancelled. Consequently, it directed the 3rd respondent to resume the land and directed the 5th respondent, to take steps to stop the construction activity. It was in this context, that the Mandal Revenue Officer, Shaikpet, the 4th respondent, issued notices dated 27.4.2006 to the petitioners, calling upon them to vacate the plots allotted to them, and to hand over the possession thereof, within 24 hours, from the date of receipt of the order. It was also informed that in case the petitioners

do not vacate, they would be evicted from the respective lands.

Petitioners contend that hardly within few days from the date on which they were put in possession of the land, a suit was filed, and an order of temporary injunction granted therein operated for a decade, and against the petitioner in W.P.No.10126 of 2006, for a period of two decades. It is urged that the

1st respondent realized the hardship that was undergone by the petitioners and permitted the change of land use, and alteration of the purpose of allotment. Petitioners contend that with the absolute transfer in their favour in the year 2002, the condition in the G.Os, through which the allotments were made, becomes otiose. It is also their case that crores of rupees were spent by them, for obtaining permits for bringing about construction, purchase of equipment, etc., by raising loans, and that the impugned G.Os were issued, without any basis, and on extraneous considerations. They complain that they were not issued any show-cause notice, before the impugned G.Os. were issued.

On behalf of respondents 1 to 4, a counter affidavit is filed. It is stated that the very purpose of allotting the land was to encourage construction of units mentioned in the respective G.Os, with a specific condition that the construction must be completed within one year, and even after decades, the land was not put to the said use. According to them, the condition is self-operative, and unless the petitioners sought for re-allotment or fresh allotment, they do not have any right to continue in possession of the land. It is also pleaded that the various orders passed by the government in the recent past, be it as to the change of land use, or change of purpose, are of no legal consequence, and that the petitioners do not derive any right on the

basis of the same.

As regards the complaint about non-issuance of show-cause notice, it is stated that when the clause contained in the allotment operates, on its own accord, there is no necessity to issue any show-cause notice.

Sri P.Janardhan Reddy, a Legislator from Khairatabad, within whose jurisdiction the land is situated, got himself impleaded as respondent No.6. He stated that there was glaring irregularity in the allotment of the land to the petitioners, and that he filed W.P.No.3164 of 2006, before this court for cancellation of the allotment. He contends that the government realized its mistake, in not resuming the land after expiry of one year, and while the writ petition was pending, the impugned G.Os were issued. He submits that the allotment is in violation of the relevant provisions, such as, A.P. (Telangana Area) Land Revenue Act, 1317 F, the A.P. (Telangana Area) Alienation of State Land Revenue Rules, 1975, and that valuable public property was allotted to the petitioners, at a throw away price. He supports the action of the government in issuing the impugned G.Os and submits that there was no necessity or obligation, to issue show-cause notices to the petitioners, inasmuch as the allotment itself was void, and that the cancellation came into existence, by operation of a clause in the allotment orders.

Sri B.Adinarayana Rao, Sri P.Venu Gopal, Sri M.Rajamalla Reddy and Sri S.Chakrapani, learned counsel for the petitioners, submit that the impugned G.Os are violative of principles of natural justice. According to them, the period stipulated for utilizing the land, in the orders of allotment, became redundant, on account of subsequent events, such as, filing of O.S.No.1203 of 1984, the

acquiescence on the part of the government, while issuing orders permitting change of land use and purpose; etc. It is also their case that with the execution of title deeds, in favour of the petitioners in the year 2002, a fresh grant has come into existence, and that an important development was not even taken note of, when the impugned orders were passed. Other contentions were also urged.

Learned Government Pleader for GAD submits that the allotment was made with a specific condition that the land must be put to use within a period of one year from the date of allotment, and since such a vital condition was not complied with, the allotment stood cancelled with the expiry of the period. He contends that this important event, which took place by operation of law, was not taken into account by the Government while passing orders permitting change of land use or when it executed sale deeds, and these steps are of no legal consequence. He contends that since the G.Os by themselves did not bring about cancellation of allotment, there was no necessity to issue show-cause notice to the petitioners. It is also submitted that even assuming that there was a justification for the petitioners, in not starting the work up to 1994, upto which time the suit was pending, there was no justification for them, in not completing the work within one year from the date of dismissal of the suit.

Sri K.Ramakrishna Reddy, learned senior counsel for the 6th respondent, had advanced several contentions. According to him, the very allotment in favour of the petitioners was contrary to the relevant provisions of law. Learned Senior Counsel points out that the allotment is in the form of a government grant and that the principles contained in Transfer of Property Act, or the Indian Contract Act, do not apply to such grants, and that there was no way, the operation of the

clause, directing that the allotment would stand cancelled, if the land is not brought to use within one year; could have been stopped, unless any fresh grant was made. He further submits that the so-called alienation in favour of the petitioners by way of sale deeds is of no legal consequence, inasmuch as it does not accord with Article 299 of the Constitution of India.

It is also urged that the petitioners were not entitled to be issued any notice, since no punitive action was initiated against them and that the cancellation took place, by operation of the clause and the impugned G.Os do nothing more than clarifying the legal position. He further contends that whatever may have been the justification in not taking up the work, due to the operation of injunction operated against them, they ought to have complied with the conditions, soon after the suit was dismissed, and viewed from this angle also, they are not entitled for any relief.

The facts narrated above reveal that the grant or allotment, as one may choose to call as half acre each, in favour of the petitioners, had taken place in the year 1984. A condition was incorporated, to the effect that the petitioners shall put the property to the use, mentioned in the order of allotment, within a period of one year, Non-compliance with this was to result in cancellation of allotment. Activity over the land was prevented, through an order of injunction, granted by a Civil Court in O.S.No.1203 of 1984, soon after the possession of the land was delivered. Several developments have taken place thereafter, and the construction over the plots commenced in the recent past. Through the impugned orders, the Government directed the

3rd respondent, to resume the possession of the lands from the petitioners, immediately. The petitioners have urged several grounds,

viz;

1) the impugned orders are violative of principles of natural justice;

2) the condition requiring the land to be put to use within one year, from the date of allotment, stood superseded, varied, or waived, on account of the subsequent developments, such as;

   a) the permission accorded by the government to change the land use;

   b) execution of sale deeds in favour of the petitioners making an absolute transfer of title;

   c) grant of permission by the government to alter the purpose of allotment; and

   d) grant of permission by the Municipal Corporation to make the constructions;

3) the failure to put the property to use within one year, was on account of orders of injunction granted by the Civil Courts;

4) the petitioners have spent huge sums of money, in the form of permission fee paid to the Municipal Corporation, cost of construction and cost of import of equipment; and

5) even according to the government, huge structures have come up, by the date of government order.

In contrast, the points urged on behalf of the respondents are that;

1) the question of issuing any show-cause notice to the petitioners does not arise, inasmuch as the cancellation of the allotment took place, as a result of the operation of the clause, contained in the respective G.Os, through which the grant was made;

2) In the event of any hurdle for the petitioners, to comply with the condition, they ought to have sought for extension of the period, or for a fresh grant;

3) the impugned G.Os did nothing more than indicate the legal consequences, and the G.Os, by themselves, did not bring about cancellation of the allotment or grant; and

4) the events that have taken place subsequent to the lapse of one year, from the date of grant, or allotment, do not give rise to any legal rights, particularly when the sale deeds were not executed, by or in the name of the Governor, as provided for under Article 202 of the Constitution of India; and

5) the grants themselves were contrary to law.

The learned counsel have made extensive submissions on the points urged by them and have cited precedents in support of their contentions. While some of them touch upon the facts, the others are purely legal in nature. The necessity to deal with the other contentions would depend upon the answer to the first contention, *viz.,* violation of principles of natural justice. Therefore, it is proposed to take up the same, first.

It is not in dispute that the petitioners were not issued any show-cause notice, before the impugned orders were passed. It is strongly contended on behalf of the respondents that the necessity to issue show-cause notice would have arisen, if only the allotment or grant in favour of the petitioner was cancelled through the G.Os, or any determination of the rights had taken place in them.

In the impugned orders, the words ‘cancellation’, ‘revocation’ or

'withdrawal' of any grant, have not been employed. Therefore, technically, the respondents can be correct, when they contend that the impugned orders did not result in any adverse civil consequences, *vis-à-vis* petitioners, and the necessity to issue show-cause notice, did not arise. However, if one looks at the impact, or the result, which the orders have brought about, a different picture emerges. The 1st respondent had not only stated that the allotment in favour of the petitioners stood cancelled, with the expiry of one year from the date of allotment, but also held that the orders passed by the government, at subsequent stages, are of no legal consequence. After referring to the developments that have taken place, up to the date of issuance of the impugned orders, the 1st respondent observed as under:

> "**8.** Whereas the above three allottees failed to utilize the land allotted to them within the stipulated time of one year in terms of the orders issued in the G.O. third read above thereby the avowed object and the purpose for which the allotments made has been defeated. Government also further observe that the subsequent orders issued in the G.Os., fourth and fifth read above have no legal consequences inasmuch as the construction works have been taken up in view of the conditional allotment for utilization of the land within one year for the purpose for which it was allotted.
>
> **9.** In the absence of reallotment orders issued by Government, in favour of the said individuals, the original allotment of sites in the G.O. third read above stands cancelled automatically. Therefore, Government view that it is expedient to take immediate action:
>
> i. to stop the construction in the sites; and
> ii. to resume the lands allotted to Sri K.Raghavendra Rao, Sri Chakravarthy and Sri K.Krishna Mohan Rao.
>
> **10.** Government, therefore, hereby directs the Commissioner, Municipal Corporation of Hyderabad to take steps to stop the construction activity in the plots allotted to

> Sri K.Raghavendra Rao and Sri K.Krishna Mohan Rao and further order the Collector, Hyderabad, to resume the lands allotted to the individuals as referred to in para 2 above immediately, after following due procedure."

Further, he directed the 3rd respondent, to resume the possession, and the 5th respondent, to stop the construction activity. Therefore, it cannot be said that the impugned orders are innocuous in their purport, or that they did not lead to any civil consequences.

Further, the 4th respondent initiated the follow up action, in pursuance of the impugned orders. He issued notices, dated 27.4.2006, and his understanding of the matter is evident from a reading of the first paragraph thereof. It reads as under:

> "Please take notice that as per the orders issued in the G.Os 1st and 2nd above cited, the Government has cancelled the allotment made in favour of
> Sri K.Raghavendra Rao, Film Director, Sri Chakdravarthy, Music Director, Sri Krishna Mohan M/s.Prakash Productions and Sri K.S.Prakash, Director, at Road No.2, opposite to Prasad Film Laboratories, Banjarahills, Hyderabad, basing on the report 4th above cited and also ordered to resume the land which was allotted to them through the orders in the G.O 3rd cited above, from the above said individuals after following due procedure."

Another way of looking at the matter is that, what would have been the state of affairs, had the G.Os not been passed. If the petitioners were made to face any adverse consequences, on account of the orders, irrespective of the language employed therein, they feel at once aggrieved, and such a situation can be brought about, only after they have been given an opportunity to explain. It cannot be gain said that the impugned orders have given rise to steps, not only for the stoppage of construction, but also the eviction of the petitioners.

Further, the 1st respondent has categorically acknowledged the nature of development that has taken place so far, over the respective plots. He did not say a word, as to what should happen to the constructions brought about by the petitioners, as well as the equipment installed therein. The impugned orders not only to result in eviction of the petitioners, but also the confiscation of their property, such as the buildings. When such a bundle of consequences have flown from the impugned orders, it cannot be said that they are innocuous statement of facts and law, not giving rise to any civil consequences *vis-à-vis* the petitioners.

No other branch of Administrative Law may have received so much of discussion, treatment, or has undergone the evaluation, as did the principles of natural justice. In a way, it can be said that it constituted the foundation of the whole edifice of the Administrative Law. It is from this age-old and universal principle that several other concepts, such as, reasonableness, fairness, impartiality, rationality, absence of bias, proper use of discretion, etc., have branched out. Occasional temptations, to depart from this great principle, have only proved that the inconvenience that may be caused, on account of following the same, is worth undergoing, when compared to the catastrophe that may result, in not following them. Occasions are not lacking, when Constitutional courts have blinked at the adherence to it, but examples are replete, when the effect of such blinking have been replenished, by firm restatement of the settled principles, before it was too late.

Though the principles of natural justice are trenched in the very concept of adjudication, and exercise of administrative power, a systematic exposition of the same, in the field of Administrative Law, is

traceable to the judgment of an English Court in ***Cooper v. Wandsworth Board of Works***[1], decided about 1½ centuries ago. An Act of British Parliament provided that no one shall construct a building in London, without giving 7 days notice to the Local Board. Violation of this provision was to result in demolition of the building. When a citizen constructed a building, without complying with the provision, the Local Board demolished the building after it reached the second story. This action, however, was not preceded by any notice. Chief Justice Erle, in this context, held as under:

> "I think the board ought to have given notice to the plaintiff and to have allowed him to be heard. The default in sending notice to the board of the intention to build, is a default which may be explained. There may be a great many excuses for the apparent default. The party may have intended to conform to the law. He may have actually conformed …though by accident his notice may have miscarried … I cannot conceive any harm that could happen to the district board from hearing the party before they subjected him to a loss so serious as the demolition of his house; but I can conceive a great many advantages which might arise in the way of public order, in the way of doing substantial justice, and in the way of fulfilling the purposes of the statute, by the restriction which we put upon them, that they should hear the party before they inflict upon him such a heavy loss."

The defence that there was a clear violation of the provision, and the demolition was purely an administrative act, was not accepted. Another member of the Bench, Willes, J, held;

> "I am of the same opinion. I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds: and that the rule is of universal application, and founded on the plainest principles of justice. Now, is the board in the present case such a tribunal? I apprehend it clearly is …"

This was concurred by Byles, J, in the following terms:

> "It seems to me that the board are wrong whether they acted judicially or ministerially. I conceive they acted judicially, because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions beginning with Dr. Bentley's case and ending with some very recent cases, establish that, although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

Though there were certain ups and downs, in the matter of following these principles, it came to be firmly stated by the Privy Council in ***Ridge v. Baldwin***[2].

In India, the principle laid down in ***Ridge's*** case[2] was not only followed, but was also given new dimensions. For instance, in ***OLGO TELLIS v. BOMBAY MUNICIPAL CORPORATION***[3], the Supreme Court held that the fact that a citizen may not have any plausible objection, in the event of a show-cause notice having been given; is no justification to violate the principles of natural justice. Instances and precedents can be multiplied.

Reverting to the facts of the case, the 1st respondent proceeded to issue the G.Os, without feeling the necessity of hearing the petitioners. According to him, he did nothing more than indicate the consequences of non-compliance, with the clause contained in the order of allotment. However, unwittingly, or otherwise, he has neutralized, or nullified, the various steps that emanated from his very department, such as, the change of land use, grant of permission to put the property to different use, etc. He was aware of all these steps and also the legal consequences. He did not choose to refer to the sale

deeds, that came to be executed, in favour of the petitioners. Reference is being made to these facts, only to drive home the point that there existed a necessity for the 1st respondent, to have issued notice to the petitioners.

It is also needed to be examined whether the operation of the clause in the order of allotment, is so universal, that no factor could have stopped it. The clause, on which the interpretation was placed by the respondents, reads as under:

> "The above allotment of sites is made subject to the condition that they will be utilized for the purpose for which they are allotted within a period of one year failing which allotment stands cancelled automatically."

By placing reliance upon the provisions of Government Grants Act, it is urged that the principles underlying the Transfer of Property Act, or Contract Act, cannot be applied to them. Reliance is also placed upon the judgments of the Supreme Court in ***M/S.HAJEE S.V.M.MOHAMED JAMALUDEEN BROS AND CO., v. GOVERNMENT OF TAMIL NADU***[4] and ***STATE OF PUNJAB v. M/S. OM PARKASH BALDEV KRISHAN***[5]**.**

If the petitioners were able to demonstrate that the clause became redundant, or otiose, for any reason, the 1st respondent would have taken a different view of the matter. The effect of execution of sale deed, and change of land use, almost after two decades, are certainly the factors, which needed attention of the parties, particularly when heavy stakes are involved. It is a different thing whether the explanation that may have been offered by the petitioners could have weighed with the respondents; the occasion would have arisen only when a show cause notice is issued. Nothing is a substitute to fair play, in Administrative Law.

In view of the finding on the question relating to absence of principles of natural justice, the necessity to advert to the other points urged by the parties is not felt and they left to be considered at an appropriate stage.

For the foregoing reasons, the writ petitions are allowed, on the short ground that the impugned orders are violative of principles of natural justice. It is left open to the 1st respondent, to take necessary steps, in accordance with law. It is made clear that none of the observations made in this order shall be treated as final pronouncement on any aspect. There shall be no order as to costs.

(L.NARASIMHA REDDY, J)

Dt: 20th July 2007.
L.R.copies be marked.
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[1] (1863)14 CB (NS) 180
[2] (1964) AC 40
[3] AIR 1986 SC 180
[4] AIR 1997 SC 1368
[5] AIR 1988 SC 2149